

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HEALTH

In the Matter of the License  
Application of Fosston Hospital  
Association, Fosston, Minnesota

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 7:00 p.m. on January 30, 1991, at the Fosston Hospital Association Cafeteria in Fosston, Minnesota. The record in this matter was closed on February 15, 1991, the date of receipt of the last post-hearing submission from the Department of Health.

David Hubbard, P.O. Box 202, Fosston, Minnesota 56542 and James Aagenes, Director of Emergency Services, 117 Park Place, Fosston, Minnesota 56542, appeared on behalf of the Fosston Hospital Association (hereinafter referred to as "the Applicant"). Don Bakken, a Polk County Commissioner, testified at the hearing in support of the application. Three written submissions were received following the hearing and were made part of the record. There were no intervenors in this matter.

This report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions of Law and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner of Health shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely effected by this report to file exceptions and present argument to the Commissioner of Health. Parties should contact John McCally, Commissioner of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this proceeding is whether the Applicant's application for a permanent license to operate a basic ambulance service should be granted under the standard set forth in Minn. Stat. 182.802, subd. 3(g).

Based upon the record herein, the Administrative Law Judge makes the

following:

## FINDINGS OF-FACT

### Procedural History

1. The Applicant was granted a temporary license to provide basic ambulance service in a primary service area (PSA) surrounding the City of Fosston in Eastern Polk County on August 14, 1990. The temporary license expired on or about February 14, 1991.

2. The Applicant is a nonprofit corporation which also operates the Fosston Municipal Hospital and a nursing home facility. It was awarded a temporary basic ambulance license after the owner of the Fosston Ambulance Service forfeited his license to the State of Minnesota due to financial difficulties. The temporary license included variances permitting the use of an esophageal obturator airway, a cardiac monitor/defibrillator and intravenous infusions. Mr. Hubbard testified that he has not received any complaints concerning the Applicant's ambulance service from those served during its period of temporary licensure.

3. On or about November 13, 1990, the Applicant submitted an application for a new permanent license to supply basic ambulance service in the same PSA.

4. On December 18, 1990, the Commissioner of Health issued a Notice of Completed Application and Notice of and Order for Hearing setting a hearing in this matter for January 30, 1991. Notice of the hearing was published in the Crookston Daily Times and in the December 24, 1990, issue of the State Register. Notice of the hearing was also served upon the Polk County Board of Commissioners; the Community Health Board; the Regional EMS System; ambulance services in Thief River Falls, Fertile, Mahanomen, Oklee and Red Lake Falls; and the mayors of the cities of Erskine, Fosston, Gully, Lengby, McIntosh, Mentor, Trail and Winger.

### Description of the Proposed Service

5. As mentioned above, the Applicant seeks a permanent license to provide basic ambulance service with variances to allow the use of an esophageal obturator airway, a portable cardiac monitor or defibrillator, and intravenous infusions.

6. The PSA proposed by the Applicant is in Polk County, Minnesota, and includes the cities of Erskine, Fosston, Gully, Lengby, McIntosh, Mentor, Trail, and Winger, and the townships of Johnson, Gully, Chester, Grove Park, Badger, Lessor, Hill River, Eden, Queen, Brandsvold, King, Knute, Woodside, Garden, Winger, Sletten, Rosebud, and Columbia. The proposed PSA is identical to that served under the Applicant's temporary license.

7. The Applicant estimates that it will make 276 runs during the next year, at an average patient charge of \$280.00. It estimates total operating

revenues of \$116,080.00. Public subsidies and grants are estimated to account for one-third of its revenue sources.

#### Relationship to Community Health Plan

8. The 1988-89 Community Health Services Biennial Plan for Polk County contains a provision regarding emergency medical services in Polk County. Ito

Goal VII of the plan. There are no relevant provisions in the 1990-91 Community Health Services Plan Update. The 1988-89 plan notes that Polk County

is a large rural county with a low population density (approximately 17 people

per square mile), and states that that factor, combined with the long travel

distances required within the county and the high cost of ambulance service,

makes decisions regarding ambulance service difficult and delicate. Polk

County has a larger percentage of older residents living within its corporate

limits than the State of Minnesota (18% of Polk County's citizens are 62 years

of age or older). The plan also indicates that, because the elderly are the

most frequent users of ambulance service and payments from Medicare have been

reduced, ambulance services have experienced decreased revenues.

9. The Polk County plan adopts a goal of ensuring that Polk County

residents who experience out-of-hospital life-threatening emergencies will be

served by a coordinated emergency medical service system in as short a response

time as possible. The following objectives are stated:

1. To maintain or improve the level of service provided by the five primary ambulance services that Polk County now has in its boundaries.

Alternative Objective I

To improve the level of ambulance service currently existing in the County.

2. To maintain and improve the level of education and training needed in fire departments for the practice of emergency medical techniques by their personnel.

3. To provide educational opportunities to the general public in the areas of CPR, First Care and First Aid.

4. To educate the general public in what is available to them in emergency care and the location of emergency care.

10. The Applicant has been continually attempting to improve its service

through quality assurance programs, continuing education for the emergency

medical technicians, and maintaining state-of-the-art equipment and dependable

ambulances. It has also conducted CPR and First Aid classes for the Fosston-Lengby Fire Department, the Fosston Incinerator, the Pioneer Memorial

Care Center in Erskine, and the Fosston Civic Center. CPR classes are

currently scheduled for March, 1991, to re-certify the staff of the Fosston Dental Clinic. The Applicant also works closely with the fire departments within the PSA because the fire departments of Erskine, McIntosh, and Winger first respond to all of the ambulance calls within their own fire districts and the Fosston Fire Department responds to all calls that may require any special rescue effort or extrication.

11. In September and October of 1990, the Applicant sponsored free emergency medical technician and First Responder classes that were open to the general public. It has also notified each nursing home and placed advertisements in the local newspapers within the PSA concerning the use of the 911 system, and has completed a workshop for elementary students on rural farm accidents.

## Comments of Governing Bodies and Public Officials

12. Numerous comments and recommendations supporting the Applicant's

censure were submitted by the Applicant as part of its application. see Application, Tab C. The Fosston City Council, the Gully City Council, the Erskine City Council, the Lengby Village Council, and the Trail City Council provided letters of support. The application is also supported by the Polk County Board of Commissioners, the Polk County Township Association, the Chief of the Fosston Police Department, the Fosston Rural Fire Department, the Fosston Public Schools, Roger D. Moe (Senate Majority Leader) and Edgar Olson (Representative from District 2B).

13. Mr. Don Bakken, a Polk County Commissioner, testified at the hearing in support of the application. He indicated that Rupert Syverson, the County Commissioner from the Fosston District, was unable to attend the hearing due to illness but is also in support of the application. As noted above, a letter was submitted on behalf of the entire Polk County Board of Commissioners supporting the application.

## Deleterious Effects from Duplication of Ambulance Services

14. Although the Applicant indicated at the hearing that advanced ambulance services based in Fargo (approximately 100 miles from Fosston) and Grand Forks (approximately 70 miles from Fosston) also serve the Fosston area on occasion, these ambulance services did not lodge any objection to the application.

15. The only objection to the application was made by Steven Belau, who is a Registered Emergency Medical Technician-Paramedic with the County Emergency Medical Service, an advanced ambulance service based in Fertile, Minnesota. Fertile is approximately thirty miles away from Fosston. Mr. Belau objects to the application primarily because the proposed PSA would overlap with the PSA currently served by the County EMS.

16. Information supplied by the Department of Health following the hearing indicates that County EMS of Fertile and the Applicant would have the

following PSA in common: all of Grove Park, Woodside, and Garden Townships;  
sections 19-21 and 28-33 of Knute Township; and sections 3-10, 15-22, and 27-34  
of Winger Township, which includes the City of Winger.

17. Mr. Belau argues that the overlapping primary service areas would result in competition that is deleterious to the public health because individuals who are not familiar with the ambulance services available in the overlapping territory and thus do not specify which ambulance service they wish to be sent might receive service from the Applicant's basic ambulance service rather than the advanced ambulance service operated by the County EMS. Mr. Belau asserts that the Fosston ambulance service historically has been automatically dispatched to medical emergencies by the Polk County 911 public safety answering point. Mr. Belau provided a copy of a resolution passed by the Winger City Council in December of 1986 indicating that the Fertile paramedics shall be designated the primary ambulance provider for the City of Winger and that the Fertile paramedics shall be dispatched to requests for medical aid received by the Polk County 911 public safety answering point originating within the City of Winger.



1 8 County EMS of Fertile has not provided any information regarding the impact of granting the Applicant's application upon its financial situation or the number of runs it makes into the areas in which its PSA overlaps with that of Applicant. Because the Applicant and its predecessor have operated a basic ambulance service (with variances) in the PSA for some time, it would be difficult for County EMS to demonstrate the adverse impact of Applicant's licensure.

#### Estimated Effect on the Public Health

19. The Applicant apparently is the only provider of ambulance services with respect to the portion of the proposed PSA which does not overlap with the PSA of County EMS of Fertile. The proposed service thus would make ambulance service available to persons who would otherwise not be served.

20. The proposed PSA is comprised largely of rural communities in Eastern Polk County. Polk County has a higher percentage of elderly persons than the state as a whole, and a higher mortality rate than the state as a whole. Many of these elderly persons suffer from heart disease and malignant neoplasms. In addition, many elderly Polk County residents live in long term care facilities and require emergency care or transportation. The PSA also encompasses a number of farming communities in which farming accidents are not uncommon and large distances may have to be travelled to medical facilities. In addition to the elderly and farm populations which have a special need for prompt emergency medical service, many other types of injuries occur within the proposed PSA which require prompt response, well trained staff and adequate equipment, such as motor vehicle accidents, falls, poisonings, fires, drowning, and suffocation.

21. In its application, the Applicant indicates that the average probable response time within the PSA in good weather is ten minutes, and in severe weather is twenty minutes. The Applicant also states that the maximum probable response time in good weather from the proposed base of operation (900 Hilligoss Boulevard, S.E. in Fosston, Minnesota) to the most distant boundary in the proposed PSA is twenty five minutes, and the maximum probable response time in severe weather is fifty minutes. The projected distance to be travelled from the proposed base of operation to the most distant boundary in the proposed PSA is 25 miles.

2 2 . The Applicant seeks a variance to allow the use of an esophageal obturator airway in order to reduce the complications associated with passive regurgitation in cardiac arrest cases. The Applicant notes that, in 1988,

34.1% of all deaths in Polk County were from heart disease. James Aagenes, Director of Emergency Services, testified at the hearing that the use of the esophageal obturator airway is very important, especially in cardiac arrest situations which may occur in Trail and Gully (two communities to the north that are sixteen to twenty miles away). As of the time of the application, the four full-time emergency medical technicians on staff with the applicant had been trained in the use of the airway. The use of the airway also has been approved by the Applicant's medical director, Dr. Paul Havens. Dr. Havens also has reviewed and approved the medical protocols and training program developed with respect to advanced airway management, and has examined and approved the continuing education program and quality assurance program for the emergency medical technicians.

23 . The Applicant also seeks a variance to allow the use of a portable cardiac monitor or defibrillator , emphasizing the large distances involved in travelling to certain communities within its PSA and the Importance of early defibrillation when cardiac arrest is experienced. Without early defibrillation, patients will not survive if they are in cardiac arrest. When only CPR can be delivered initially and definitive therapy occurs only after arrival at the hospital, survival rates of 5% or less are usual. In contrast, when pre-hospital defibrillation is available, survival rates for patients discovered in ventricular fibrillation range from 15% to 30%. The Applicant's medical director, Dr. Havens, has reviewed and approved the medical protocols and training program for the emergency medical technicians with respect to the cardiac monitor/defibrillator, and has examined and approved the continued education and quality assurance programs for the emergency medical technicians. All four of the full-time emergency medical technicians employed as of the date on which the application was filed had been trained with respect to the use of the cardiac monitor/defibrillator.

24. The Applicant seeks a third variance to allow the establishment or maintenance of intravenous infusions. Approximately 30% of the calls received by the Applicant pursuant to its temporary license have been classified as trauma runs. The use of intravenous infusions is very important in trauma situations. All four of the full-time emergency medical technicians employed as of the date of the application had been trained with respect to this variance. The Applicant's medical director, Dr. Havens, has reviewed and approved the medical protocols and training program for the emergency medical technicians with respect to the variance to allow intravenous infusions, and has examined and approved the continuing education and quality assurance programs for the emergency medical technicians.

25. Since the completion of the Applicant's application materials, three additional emergency medical technicians have been added to the crew. These emergency medical technicians have not yet completed their training with respect to the variances, and will not use the variance techniques until their training is completed. The Applicant's present crew consists only of emergency medical technicians.

26. The emergency medical technicians employed by the Applicant will receive training and testing on an annual basis with respect to the equipment and techniques encompassed by the three variance requests. The procedures encompassed by the variances will also be covered every three months in a classroom setting.

27. The ambulance service is run as a department of the Fosston Hospital and is required to submit a monthly quality assurance plan for review by a

quality assurance committee within the hospital.

28. The application for licensure is supported by the Northwest Minnesota Emergency Medical Services Corporation. The Corporation acknowledged "the professionalism, commitment, and dedication of [the Applicant] to provide quality emergency health care in northwest Minnesota." See Application, Tab C.

29. Paul D. Havens, M.D., of the Fosston Clinic (who is also the Applicant's medical director) also supports the application. Dr. Havens praised the ability of the Fosston Hospital Association "to provide excellent

in-patient and out-patient care in extremely trying times," and expressed his belief that the Fosston Hospital Association is "in the best possible position to coordinate pre-hospital community in-patient care, as well as coordinating transfer of patients to tertiary facilities." let Application, Tab C.

30. Wesley O. Ofstedal, M.D., of the Fosston Clinic also supplied written comments supporting the application. Dr. Ofstedal noted that an ambulance service is needed in the Fosston area. He emphasized that, in the absence of a Fosston-based ambulance service, it would take in excess of thirty minutes for an ambulance to arrive in many instances, and that such a delay would have a negative impact upon many of the patients. He stated that the operation of the ambulance service by the Applicant "would be a large step forward in providing quality ambulance services to the people of the East Polk County area. The hospital has the resources and financial capability of operating a safe and effective emergency system. The hospital takes its role as a caregiver in this area very seriously and the ambulance service would be another help in achieving that goal." Set Application, Tab C.

31. The following health care professionals also submitted letters in support of the application: Brenda L. Menier, the Director of the Polk County Nursing Service in Crookston; Curtis Jenson, Administrator of the McIntosh Manor Nursing Home in McIntosh; and Patti Bacon, Director of the Fosston Hospice. See Application, Tab C.

32. Additional letters in support of the application were submitted by the following local organizations: the McIntosh Men's Action Club, the Fosston Ministerial Association, the Fosston Nutrition Site, the Embassy Community Center, the Fosston Senior Citizen Center, the Fosston Jaycees, and the Singles' Christian Fellowship Assembly. See Application, Tab C.

#### Benefit to Public Health Versus Costs of the Proposed Service

33. The Applicant did not offer any detailed evidence concerning the costs of the proposed service. Because the Applicant has been licensed under a temporary license to provide basic ambulance service (with the three variances requested as part of its permanent license), it should not be necessary to incur additional costs for new equipment or additional personnel or training.

34. The Applicant has made a commitment to the Polk County Commissioners that the subsidy that had been issued to the predecessor ambulance service could be kept at the same level for the Applicant for one year.

35. The Applicant plans to purchase two ambulance rigs if it is successful in obtaining a permanent license. The Applicant has leased its ambulance rigs while operating under its temporary license. No comparison of the relative costs of leasing and purchase was provided at the hearing.

36. Because the Applicant receives county tax monies, the Applicant provides Polk County and the Health Care Advisory Board with a profit and loss statement and a statistical analysis on a monthly basis so the County can oversee the financial performance of the ambulance service.

37. Because the Fosston Hospital is a nonprofit institution, some costs of the ambulance service may be absorbed by the hospital resulting in reduced rates to the patients.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. 14 50 and 144.802. The notice of hearing was proper in all respects and all procedural and substantive requirements of law and rule have been fulfilled.

2. Minn. Stat. 144.802, subd. 3(g) provides:

The administrative law judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receiving notice of the application. In making the recommendations, the administrative law judge shall consider and make written comments as to whether the proposed service..... is needed, based on consideration of the following factors:

- (1) the relationship of the proposed service . . . to the current community health plan as approved by the commissioner under section 145.918;
- (2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;
- (3) the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;
- (4) the estimated effect of the proposed service . . . on the public health.
- (5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service . . . .

The administrative law judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted . . . .

3. The proposed basic ambulance service with variances is consistent with the current community health plan for Polk County. The plan has adopted the goal of ensuring that persons experiencing emergencies outside of hospitals will be served by a coordinated emergency medical system as soon as possible. The provision of basic ambulance service from a base of operations in Fosston,

with the requested variances, will enhance the provision of emergency medical services in Eastern Polk County.

4. The governing bodies of Fosston, Gully, Erskine, Lengby, and Trail support the application. No governing body of any municipality within the PSA filed any comments objecting to the application.



5. The public health will not suffer as a result of any duplication of ambulance services. The proposed PSA does overlap the PSA served by the County Emergency Medical Service of Fertile. Because the Applicant seeks to operate a basic service and the County EMS operates an advanced service, however, there should be little duplication of service. Moreover, by licensing the Applicant's predecessor and County EMS and by awarding the Applicant a temporary license, the Commissioner of Health has previously determined that there would be no deleterious effects on the public from any duplication of services that may result in the overlapping portion of the PSA.

The case of *Twin Ports Convalescent Inc. v. Minnesota State, Board of Health*, 257 N.W.2d 343 (1977), and the Commissioner's decisions cited by County EMS do not mandate the denial of the application of this case. The Commissioner's Determinations upon which County EMS relies (LST 85-6-MDH (June 17, 1985), LST 85-1-MDH (February 5, 1985), and LST 82-9-WDA (November 1, 1982)) are distinguishable from the present case because they involve situations in which the proposed PSA substantially or completely overlapped that of existing providers, there was insufficient demand in the PSA to sustain the applicant as well as the existing providers, and there was an insufficient showing of local support for the application. In contrast, the proposed PSA to be served by the basic ambulance service of the Fosston Hospital Association overlaps only a portion of the PSA of the advanced ambulance service of County EMS, the PSA for some time has supported both an advanced and a basic service, and there is ample local support for the Applicant's licensure. Although the Supreme Court's decision in the *Twin Ports* case makes it clear that the statutory scheme does not contemplate that competition between ambulance providers be fostered as part of a "free enterprise" approach to ambulance licensure, the Court's decision does not preclude licensure where there has been no convincing demonstration of deleterious effect on the health of those in the overlapping PSA. The deleterious effect alleged by County EMS--that of the "automatic" dispatching of the Applicant's basic ambulance service by 911 dispatchers in the overlapping PSA where advanced ambulance service would be more appropriate--could (and should) be resolved through the development of appropriate selection protocols for use by the 911 dispatchers.

6. The proposed service will have a positive effect on the public health because it will provide the only ambulance service that is currently available in a large portion of the proposed PSA. In addition, if the requested variances are granted, it will result in better quality care in the field and improved response in accident, trauma, and cardiac arrest situations. Granting of the variance request will be of particular benefit to the public health in responding to emergencies occurring in the more geographically distant areas of the PSA.

7. The benefits accruing to the public health outweigh any likely costs associated with the proposed service. The Applicant has committed to receiving the same level of subsidy for one year as its predecessor. Moreover, because the applicant is a nonprofit institution, it is likely that some cost of the ambulance service will be absorbed by the hospital, resulting in reduced rates to the patients.

8. The proposed service is needed, and the application for basic ambulance service in the proposed PSA with the requested variances for the establishment or maintenance of intravenous infusions, the use of a portable

cardiac monitor or defibrillator, and the use of an esophageal obturator airway should be granted.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Health grant the application of the Fosston Hospital Association to provide basic ambulance service within the proposed primary service area and grant the variances requested by the Applicant for the establishment or maintenance of intravenous infusions, the use of a portable cardiac monitor or defibrillator, and the use of an esophageal obturator airway.

Dated this 21st day of February, 1991.

BARBARA L. NEILSON  
Administrative Law Judge

Reported: Taped, not transcribed (tape no. 9978).